

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

SWINTER GROUP, INC.,

Plaintiff,

v.

THRIVE CONSTRUCTION, LLC, d/b/a
THRIVE CONSTRUCTION, ALAN
JOSEPH AND BUCK BAUMERT,

Defendants.

Case No. 4:18-cv-01712

State Cause No. 1811-CC00613

JURY TRIAL DEMANDED

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendants Thrive Construction, LLC, Buck R. Baumert, and Alan Joseph, pursuant to 28 U.S.C. § 1441, remove to this Court the state action described below, which is within the original jurisdiction of this Court and properly removed under 28 U.S.C. Sections 1331, 1441, and 1446.

PLAINTIFF'S PETITION

1. This action was commenced by the filing of Plaintiff's Petition on or about June 20, 2018 in the Circuit Court of St. Charles County, State of Missouri, Case No. 1811-CC00613.

2. In the Petition, Swinter Group, Inc. (the "Named Plaintiff"), on behalf of itself and the proposed class, asserts Telephone Consumer Protection Act ("TCPA") Violation claims against Defendants. (See Petition attached as Exhibit A). The TCPA is a federal statute codified at 47 U.S.C. § 227.

3. The claims arise from allegations that Defendants violated the TCPA by transmitting a facsimile to Named Plaintiff and the proposed class without obtaining their prior express invitation or permission and by not displaying a required opt-out notice. (Id.).

4. The Named Plaintiff seeks damages for concrete and particularized harms it and the proposed class allegedly suffered due to Defendants' alleged conduct, including actual damages, statutory damages, treble damages, costs, and attorneys' fees, an injunction, and an incentive award for recompense for these alleged harms as a result of Defendants' alleged violations of the TCPA. (See id. at ¶¶ 47-48).

5. The Petition expressly asserts that Named Plaintiff intends to seek certification of the action as a class action. (See id. at ¶ 44).

6. As required under 28 U.S.C. § 1446(a), a copy of all process and proceedings received by Defendants (Other than the Petition attached as Exhibit A) is attached hereto as Exhibit B. No other process, pleadings, or orders have been served on Defendants.

BASIS FOR REMOVAL

7. This Court has original jurisdiction over the TCPA Violation claims pursuant to 28 U.S.C. § 1331 because there is a federal question. Plaintiff's only claim is that Defendants violated the TCPA, a federal statute; that Plaintiff is pursuing a purely federal claim is apparent from the face of the Petition.

REMOVAL VENUE

8. Removal to this Court is proper under 28 U.S.C. § 1441(a) because it embraces the county where the State Court Action was filed.

TIMELY REMOVAL

9. Defendant Thrive Construction, LLC was served on September 7, 2018. Defendants Buck Baumert and Alan Joseph have never been served but join in this Notice of Removal. Accordingly, this Notice of Removal is timely under 28 U.S.C. § 1446(b) because it is filed within thirty days after receipt, through service or otherwise, of a summons and a copy of the initial pleading setting forth the claim for relief upon which action is based.

NOTICE TO THE CLERK OF THE STATE COURT AND ADVERSE PARTIES

10. As required under 28 U.S.C. § 1446(d), Defendants are filing a copy of this Notice of Removal with the Clerk of the Circuit Court of St. Charles County, Missouri and serving Named Plaintiff with the Notice of Removal.

11. Pursuant to Local Rule 3-2.02, Defendants are contemporaneously filing a completed Civil Cover Sheet attached hereto, an Original Filing Form attached hereto, and a Disclosure of Organizational Interests Certificate as a separate filing.

12. By filing this Notice of Removal, Defendants do not waive any defenses which may be available to them, including an absence of personal jurisdiction over Defendants.

CONCLUSION

13. For the reasons stated above, this action is within the original jurisdiction of this Court pursuant to 28 U.S.C. § 1331. Accordingly, this action is removable pursuant to 28 U.S.C. §§ 1331, 1441, and 1446.

WHEREFORE, Defendants Thrive Construction, LLC, Buck R. Baumert and Alan Joseph give notice that the above-referenced action pending against it in the Circuit Court of St. Charles County, Missouri is removed to this Court.

Respectfully submitted,

EVANS & DIXON, L.L.C.

By: /s/Brian R. Shank
Don V. Kelly #37121MO
Brian R. Shank #59955MO
Metropolitan Square
211 North Broadway, Suite 2500
Saint Louis, Missouri 63102
(314) 621-7755
(314) 884-4466 (Facsimile)
dkelly@evans-dixon.com
bshank@evans-dixon.com

*Attorneys for Defendants Thrive Construction, LLC,
Alan Joseph and Buck R. Baumert*

CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2018, a copy of the foregoing was served via email on counsel for plaintiff: Ronald J. Eisenberg at reisenberg@sl-lawyers.com and Mary B. Schultz at mschultz@sl-lawyers.com.

/s/Brian R. Shank